

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Amanda Harouche	Team: Squad #16	CCRB Case #: 201410056	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Saturday, 09/27/2014 1:00 AM	Location of Incident: Avenue D between Nostrand Avenue and East 29th Street and the 67th Precinct Stationhouse	Precinct: 67	18 Mo. SOL 3/27/2016	EO SOL 3/27/2016	
Date/Time CV Reported Wed, 10/01/2014 9:41 AM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Wed, 10/01/2014 9:41 AM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM James Giamboi	05153	947957	067 PCT
2. POM Christophe Mcdonald	23355	947240	067 PCT
3. SGT Sean Claxton	01500	943092	067 PCT
4. SGT Anthony Egan	3129	945688	067 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POF Joannie Colon	27657	954657	PBBS
2. POM Carl Becker	11065	954539	PBBS

Officer(s)	Allegation	Investigator Recommendation
A.SGT Sean Claxton	Discourtesy: On Avenue D between Nostrand Avenue and East 29th Street in Brooklyn, Sgt. Sean Claxton spoke discourteously to § 87(2)(b)	
B.SGT Sean Claxton	Force: On Avenue D between Nostrand Avenue and East 29th Street in Brooklyn, Sgt. Sean Claxton used physical force against § 87(2)(b)	
C.POM Christophe Mcdonald	Force: On Avenue D between Nostrand Avenue and East 29th Street in Brooklyn, PO Christopher McDonald used physical force against § 87(2)(b)	
D.POM James Giamboi	Force: On Avenue D between Nostrand Avenue and East 29th Street in Brooklyn, PO James Giamboi used physical force against § 87(2)(b)	
E.SGT Anthony Egan	Abuse: At the 67th Precinct Stationhouse, Sgt. Anthony Egan did not obtain medical treatment for § 87(2)(b)	
F.SGT Sean Claxton	Abuse: At the 67th Precinct Stationhouse, Sgt. Sean Claxton did not obtain medical treatment for § 87(2)(b)	

Case Summary

On September 27, 2014 around 1:00 a.m., § 87(2)(b) ran from his house, located at 1323 New York Avenue in Brooklyn, to the corner of Avenue D between Nostrand Avenue and East 29th Street where his friend's car had been stopped by PO James Giamboi, PO Christopher McDonald and Sgt. Sean Claxton of the 67th Precinct. § 87(2)(b) stood on the sidewalk and yelled over to the police officers about them having nothing better to do than harass people. Sgt. Claxton then allegedly said, "Who the fuck are you talking to? (**Allegation A**). Sgt. Claxton then grabbed § 87(2)(b)'s wrist and § 87(2)(b) pushed Sgt. Claxton's hands away. PO Giamboi and PO McDonald then grabbed § 87(2)(b) along with Sgt. Claxton, and told § 87(2)(b) to put his hands behind his back. § 87(2)(b) moved his body around and tried to look at the officers while asking them why they were arresting him. § 87(2)(b) was then allegedly slammed against a wall and thrown onto the ground by the officers (**Allegations B, C, and D**). § 87(2)(b) then felt three or four kicks on the left side of his body by his ribs, but he could not tell from who the kicks were coming or if they were from a foot or a knee (within **Allegations B, C and D**). § 87(2)(b) was handcuffed and transported to the 67th Precinct stationhouse. While at the front desk and in the presence of Sgt. Claxton and the Desk Officer, Sgt. Anthony Egan, § 87(2)(b) allegedly requested that the officers bring him to the hospital but instead he was brought to a holding cell and was never brought to a hospital (**Allegation E and Allegation F**). When he was being taken out of the holding cell to be transported to Brooklyn Central Booking, § 87(2)(b) stood in front of the desk and requested to go to the hospital again, in the presence of Sgt. Egan (**Allegation F**). § 87(2)(b) was brought to Brooklyn Central Booking before being brought to a hospital. At Brooklyn Central Booking, EMS workers told the officers who transported § 87(2)(b) that they needed to bring § 87(2)(b) to the hospital before he could be admitted. § 87(2)(b) was taken to § 87(2)(b) treated and released.

§ 87(2)(b) was arrested during this incident. [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Mediation, Notice of Claim, and Criminal Histories

This case was not eligible for mediation because § 87(2)(b) was arrested during this incident and sustained injuries for which he sought medical treatment. As of April 3, 2015, no Notice of Claim has been filed in regards to this incident (encl. 14e). [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Civilian and Officer CCRB Histories

- This is the first CCRB complaint filed by § 87(2)(b) § 87(2)(b)
- Sgt. Claxton has been a member of the service for eight years and there are three substantiated CCRB allegations against him. In case 201400940, a refusal to provide name and shield allegation was substantiated against him. The CCRB recommended Command Discipline-A but the NYPD disposition is still pending. In the same case a frisk and stop were substantiated against him. The CCRB recommended Command Discipline – B but the NYPD disposition is still pending. He currently has one open case with the CCRB (Case #201501804). § 87(2)(g)

- PO Giamboi has been a member of the service for six years and there is one substantiated CCRB allegation against him. In Case # 201400940, a refusal to provide name/shield allegation was substantiated against him. The CCRB recommended Command Discipline – A but the NYPD disposition is still pending. § 87(2)(g)
- PO McDonald has been a member of the service for six years and there are no substantiated CCRB allegations against him. § 87(2)(g)

Potential Issues

The investigation was unable to obtain video footage pertaining to this incident. The requests for TARU video footage on the corner of the incident location came back negative because the camera was not networked and there was only 7 day video storage at the camera pole (the request was received by TARU more than 7 days after the incident) (encl. 151). Additionally, video footage was obtained from the Duane Reade on the corner of this incident location however, the camera is pointed down the block adjacent to where this incident occurred and therefore none of the incident was captured by this camera (encl. 13g).

Findings and Recommendations

Explanation of Subject Officer Identification

- Sgt. Claxton acknowledged being the first officer to interact with § 87(2)(b) § 87(2)(g)
- PO McDonald and PO Giamboi acknowledged interacting with § 87(2)(b) § 87(2)(g)
- Sgt. Egan and Sgt. Claxton were both present when § 87(2)(b) alleged he asked for medical attention; Sgt. Claxton was present the first time and Sgt. Egan was present both times. § 87(2)(g)

Investigation Findings and Recommendations

Allegations Not Pleaded

§ 87(2)(g)

Allegation A: Discourtesy –On Avenue D between Nostrand Avenue and East 29th Street in Brooklyn, Sgt. Sean Claxton spoke discourteously to § 87(2)(b)

§ 87(2)(b) stated that he ran to the sidewalk in response to officers stopping his friend, § 87(2)(b) s, car. § 87(2)(b) stood in the middle of the sidewalk, and yelled to the officers that “Y’all fucking police officers don’t have nothing else better to do than harass people.” Sgt. Claxton looked at § 87(2)(b) and said, “Who the fuck are you talking to? Come here” and then walked towards § 87(2)(b) (encl. 3a-k). In his original phone statement, § 87(2)(b) stated that Sgt. Claxton said, “Who are you talking to?”

§ 87(2)(b) who only provided a phone statement, did not mention any officer using discourtesies with § 87(2)(b) (encl. 4a). § 87(2)(b) § 87(2)(b) s friend who was in the car with

§ 87(2)(b) and who only provided a phone statement, did not see any of the interaction before § 87(2)(b) was brought down to the ground by Sgt. Claxton and did not know that Sgt. Claxton was present at the scene until he saw him bringing § 87(2)(b) to the ground (encl. 4b-c).

Sgt. Claxton denied using any discourtesies with § 87(2)(b) and denied saying “Who the fuck are you talking to.” Sgt. Claxton also stated that he does not find it acceptable for his officers to ever use discourtesies in public (encl. 5a-g).

PO Giamboi did not hear Sgt. Claxton say, “Who the fuck are you talking to” and stated that Sgt. Claxton does not curse (encl. 6a-p). PO McDonald did not hear Sgt. Claxton say, “Who the fuck are you talking to” to § 87(2)(b) (encl. 7a-g).

§ 87(2)(g)

Allegation B: Force – On Avenue D between Nostrand Avenue and East 29th Street in Brooklyn, Sgt. Sean Claxton used physical force against § 87(2)(b)

Allegation C: Force – On Avenue D between Nostrand Avenue and East 29th Street in Brooklyn, PO Christopher McDonald used physical force against § 87(2)(b)

Allegation D: Force – On Avenue D between Nostrand Avenue and East 29th Street in Brooklyn, PO James Giamboi used physical force against § 87(2)(b)

§ 87(2)(b) stated that Sgt. Claxton grabbed both of § 87(2)(b)'s wrists with both of his hands and § 87(2)(b) pulled his arms down and away from Sgt. Claxton while saying either “Don’t grab me like fucking that” or “Get the fuck off me.” PO Giamboi and PO McDonald then ran up to § 87(2)(b) and Sgt. Claxton. Sgt. Claxton grabbed § 87(2)(b)'s left arm and instructed him to put his hands behind his back. PO Giamboi and PO McDonald also grabbed § 87(2)(b)'s arms and pulled them behind his back. § 87(2)(b) was moving his body around, trying to turn to look at the officers while asking them what he did and why they were arresting him. § 87(2)(b) stated that he was then slammed against the wall and thrown onto the ground by the officers. While § 87(2)(b) was face down on the ground he could not see what was happening above him but he felt three or four jabs on the left side of his body by his ribs; § 87(2)(b) could not tell if these jabs were coming from a knee or a foot. § 87(2)(b) could not remember what he was doing with his hands at the time he felt these jabs to his ribs. § 87(2)(b) was eventually handcuffed and placed into the police car. § 87(2)(b) stated that he sustained a scrape on his elbow and his face and his ribs hurt him after this interaction.

§ 87(2)(b) who only provided a phone statement, stated that Sgt. Claxton threw § 87(2)(b) on the ground and then PO Giamboi and PO McDonald returned his driver’s license and registration and ran over to Sgt. Claxton and § 87(2)(b). PO Giamboi and PO McDonald became involved with § 87(2)(b) and Sgt. Claxton on the ground. § 87(2)(b) stated § 87(2)(b) was “roughed up” and then arrested and that everything happened very quickly (encl. 4a). § 87(2)(b) who only provided a phone statement, stated that when he looked back he saw § 87(2)(b) being taken to the ground by Sgt. Claxton. He did not see what happened to § 87(2)(b) leading up to

Sgt. Claxton taking § 87(2)(b) to the ground. PO Giamboi and PO McDonald, who had previously been at § 87(2)(b)'s car, ran towards § 87(2)(b) and Sgt. Claxton. § 87(2)(b) got out of his car and saw the officers on top of § 87(2)(b) handcuffing him (encl. 4b-c).

Sgt. Claxton stated that he told § 87(2)(b) he was under arrest for § 87(2)(b) since he was yelling on the street and causing a crowd to form and did not listen to Sgt. Claxton's instructions to stop yelling. Sgt. Claxton then went to grab § 87(2)(b)'s wrists and § 87(2)(b) pushed Sgt. Claxton's hand away from him. Then PO Giamboi, PO McDonald and Sgt. Claxton tried to physically restrain § 87(2)(b) by using their hands to try to grab § 87(2)(b)'s hands. § 87(2)(b) was fighting the officers, moving his arms and kicking his legs. Because of this, § 87(2)(b) was placed onto the ground by the officers; § 87(2)(b) was not thrown onto the ground. Sgt. Claxton did not push § 87(2)(b) into a wall and did not see another officer do so. When § 87(2)(b) was on the ground, the officers struggled with § 87(2)(b) and continued to grab at his arms to bring his hands behind his back. § 87(2)(b) continued to resist the officers and make it so that the officers could not easily grab his arms and pulled his arms away from the officers. The officers did not take any physical actions on § 87(2)(b) besides pulling on his arms. Sgt. Claxton denied kneeling or kicking § 87(2)(b) in his ribs and he did not see another officer do so (encl. 5a-g).

PO Giamboi stated that the officers tried to grab § 87(2)(b)'s hands but he continuously waved his hands around which prevented the officers from being able to grab them. PO Giamboi performed a leg sweep on § 87(2)(b) to bring him down to the ground; he did this by grabbing § 87(2)(b)'s left arm and putting his right leg in front of § 87(2)(b)'s two legs and pushing § 87(2)(b)'s body over his two legs in order to bring § 87(2)(b) to the ground on the sidewalk. PO Giamboi did not slam § 87(2)(b) onto the sidewalk. § 87(2)(b) was not pushed against a wall by PO Giamboi or any other officer before he was brought to the ground. § 87(2)(b) had his hands crossed underneath his body when he was on the ground. PO Giamboi tried to pull § 87(2)(b)'s arms out from under his chest but every time he grabbed for one arm, § 87(2)(b) rolled his body so that PO Giamboi could not access the arm. PO Giamboi then used his expandable baton and put it in the crook of § 87(2)(b)'s elbow in order to wedge § 87(2)(b)'s arms out from beneath his body. Besides pulling his arms and using his expandable baton to wedge § 87(2)(b)'s arm out from underneath him, PO Giamboi did not use any other force on § 87(2)(b). PO McDonald and Sgt. Claxton were holding § 87(2)(b)'s body down when PO Giamboi did this. PO Giamboi stated that he had one of his knees on the side of § 87(2)(b)'s body and one of his knees on § 87(2)(b)'s shoulder when he was using his asp to get § 87(2)(b)'s arm from under his body; he placed his knees in these positions in order to prevent § 87(2)(b) from being able to elbow PO Giamboi. PO Giamboi did not intentionally knee § 87(2)(b) in the ribs but stated that if § 87(2)(b) had been kned by him it would have been accidental and would have occurred in the process of apprehending § 87(2)(b) who was moving around on the ground. PO Giamboi did not see any other officer use their knees on § 87(2)(b) or knee § 87(2)(b) in any part of his body. Neither PO Giamboi nor any other officer kicked § 87(2)(b). After about 15 to 20 seconds on the ground, § 87(2)(b) was handcuffed and placed into the police vehicle (encl. 6a-p).

PO McDonald corroborated PO Giamboi's statement regarding § 87(2)(b)'s hand movements while standing and the leg sweep that PO Giamboi performed. PO McDonald did not see § 87(2)(b) slammed against a wall by any of the officers and denied slamming § 87(2)(b) against the wall. Once on the ground, § 87(2)(b) crossed his arms under his chest and screamed. PO Giamboi was able to get one of § 87(2)(b)'s hands from underneath his chest and then PO McDonald was able to get his second arm behind his chest. PO McDonald did not have any physical contact with § 87(2)(b) besides pulling one of his arms behind his back and placing the handcuffs on him. PO

McDonald did not kick or knee § 87(2)(b) and did not see another officer kick or knee § 87(2)(b). After being handcuffed, a process that took approximately 90 seconds, § 87(2)(b) was placed into the police car and brought to the 67th Precinct stationhouse (encl. 7a-g).

The medical treatment of prisoner report shows that § 87(2)(b) requested/required medical aid at 7:45 a.m. on September 27, 2014. The nature of his illness/injury was rib pain and he was transported to § 87(2)(b) where he was treated and released (encl. 9a). § 87(2)(b)'s medical records show his chief complaint was that officers kicked him in his ribs and head and that he had pain to his left rib. He rated his pain as moderate pain. § 87(2)(b) was diagnosed with assault by other specified means and discharged from the hospital. § 87(2)(b) had mild redness to his left forehead and no obvious injury or discoloration on his left rib area (encl. medical records folder).

§ 87(2)(g)

Allegation E: Abuse of Authority – At the 67th Precinct Stationhouse, Sgt. Anthony Egan did not obtain medical treatment for § 87(2)(b)

Allegation F: Abuse of Authority – At the 67th Precinct Stationhouse, Sgt. Sean Claxton did not obtain medical treatment for § 87(2)(b)

§ 87(2)(b) stated that when he walked into the 67th Precinct stationhouse and stood in front of the desk officer, he yelled out loud to the whole stationhouse, “Ya’ll are going to have to take me to the hospital. My ribs hurt. They might be broken.” § 87(2)(b) made this request generally when Sgt. Claxton, PO Giamboi and PO McDonald were speaking to the desk officer, Sgt. Egan. The officers did not respond to this request. § 87(2)(b) was then brought to a separate holding cell by himself where he waited for about two hours. PO Giamboi came to § 87(2)(b)'s cell with a paper that he asked § 87(2)(b) to sign saying the he did not want medical attention so that he could get through the process quicker since he had been complaining about his ribs before; § 87(2)(b) refused to sign this paper and PO Giamboi walked out of the cell area. Five to ten minutes later, two officers that were transporting § 87(2)(b) to Central Booking came to take him out of the cell. § 87(2)(b) asked the officers “hold on you really didn’t take me to the hospital? I want to go to the hospital” The officers told him to give them his arms and handcuffed him and brought him to the front of the stationhouse near the desk. While in front of the desk, § 87(2)(b) started yelling “Y’all are really putting me through the system for this? And y’all didn’t take me to the hospital? How didn’t ya’ll take me to the hospital? I want to go to the hospital! My ribs hurt!” § 87(2)(b) was transported to central booking before being taken to the hospital. At Brooklyn Central Booking, § 87(2)(b) told the EMS workers that his ribs were hurting him from the earlier altercation he had with the police officers. The EMS workers instructed his transporting officers to take § 87(2)(b) to the hospital and bring him back to Brooklyn Central Booking (encl. 3a-k).

The medical treatment of prisoner report shows that § 87(2)(b) requested/required medical aid at 7:45 a.m. on September 27, 2014. The nature of his illness/injury was rib pain and he was transported to § 87(2)(b) where he was treated and released (encl. 9a).

§ 87(2)(b)'s medical records show that § 87(2)(b) was treated at § 87(2)(b) at § 87(2)(b). His chief complaint was that officers kicked him in his ribs and head and that he had pain to his left rib. He rated his pain as moderate pain. § 87(2)(b) was diagnosed with assault by other specified means and discharged from the hospital at § 87(2)(b). § 87(2)(b) had mild redness to his left forehead and no obvious injury or discoloration on his left rib area (encl. medical records folder).

Sgt. Egan did not recall anything about § 87(2)(b) being brought into the stationhouse. Although Sgt. Egan did not remember § 87(2)(b) or him asking for medical attention, he stated that § 87(2)(b) never asked him to go to the hospital because if he had asked him he would have been brought to the hospital and the command log does not show that he was brought to the hospital. Sgt. Egan did not instruct PO Giamboi to bring a refusal of medical treatment form to § 87(2)(b)'s holding cell (encl. 8a-c).

Sgt. Claxton stated that § 87(2)(b) did not complain about his ribs hurting and that he did not tell the officers that they needed to take him to the hospital because his ribs hurt or ask for any medical attention. He stated that § 87(2)(b) asked the officers to do whatever they could to get him out of the stationhouse as soon as possible. Sgt. Claxton did not know of any officer going into § 87(2)(b)'s holding cell with a refusal of medical attention form and he did not instruct any officer to do this (encl. 5a-g).

PO Giamboi did not remember § 87(2)(b) ever requesting medical attention. § 87(2)(b) did not tell PO Giamboi that he wanted to go to the hospital while he was standing in front of the desk and he did not hear § 87(2)(b) ask any other officer to go to the hospital. PO Giamboi did not remember going to § 87(2)(b)'s holding cell with a refusal of medical attention form and asking § 87(2)(b) to sign it. PO Giamboi stated that if § 87(2)(b) had requested to go to the hospital, he would have taken § 87(2)(b) to the hospital (encl. 6a-p).

PO McDonald stated that § 87(2)(b) did not make any requests to go to the hospital while standing in front of the desk and that he did not complain about his ribs hurting or about any other injuries. PO McDonald stayed at the stationhouse for the rest of his tour but did not have any more interactions with § 87(2)(b) after standing with him at the front desk when he first entered the stationhouse (encl. 7a-g).

Neither PO Becker nor PO Colon, the transport officers, remembered their interactions with § 87(2)(b) though they had detailed memo book entries regarding his transport. Both officers stated that they would have alerted their supervisor and brought § 87(2)(b) to the hospital as soon as he asked to go to the hospital. PO Becker stated that he was told by EMS at Brooklyn Central Booking that he needed to bring § 87(2)(b) to the hospital so he brought § 87(2)(b) to the hospital (encl. 8d-q).

§ 87(2)(g)

§ 87(2)(g) [Redacted]
[Redacted]
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[Redacted]

Pod: _____

Investigator:	_____	_____	_____
	Signature	Print	Date

Supervisor:	_____	_____	_____
	Title/Signature	Print	Date

Reviewer:	_____	_____	_____
	Title/Signature	Print	Date

Reviewer:	_____	_____	_____
	Title/Signature	Print	Date